

Federal Communications Commission

DA 02-2505

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

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Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Lufkin, Texas)

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MM Docket No. 01-245
RM-10235

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 2, 2002

Released: October 9, 2002

By the Chief, Video Division:

1. The Commission has before it two proceedings concerning DTV allotments at Tyler and Lufkin, Texas. These proceedings were initiated by two separate petitions for rule making filed by Civic License Holding Company, Inc. ("Civic"). Civic is the licensee of station KLTV (TV), NTSC channel 7, Tyler, Texas, and station KTRE (TV), NTSC channel 9, **Lufkin**, Texas.

By *Notice of Proposed Rule Making* in MM Docket No. 01-244, 16 FCC Rcd 16687 (2001), the Commission proposed, at the request of Civic, the substitution of DTV channel 10 for station KLTV(TV)'s assigned DTV channel 38 at Tyler, Texas. The Commission also issued a *Notice of Proposed Rule Making*, 16 FCC Rcd 16692 (2001), proposing, at the request of Civic, the substitution of DTV channel 11 for station KTRE (TV)'s assigned DTV channel 43 at Lufkin, Texas. The deadline for filing initial comments and reply comments in both proceedings was November 13, 2001, and November 28, 2001, respectively. In response to the proposals, Civic, International Broadcasting Network ("IBN") licensee of low power stations KLGW-LP, Longview, Texas, and KIBN-LP, Lufkin, Texas, Lee Miller ("Miller"), David Sharp ("Sharp"), Richard L. Rambin ("Rambin"), C. Dwyan Calvert ("Calvert") and Bert McKinney, C.P.A. ("McKinney") filed initial comments.¹ Our review of the pleadings indicates that most of the same parties have filed the same comments in both proceedings. For purposes of administrative efficiency, we are consolidating these two proceedings for consideration.

¹ After the record closed, Civic and IBN filed additional comments. The Commission's Rules do not contemplate the filing of pleadings beyond the comment periods set forth in the *Notice*. Moreover, we find that the additional comments do not provide information of decisional significance and therefore will not be considered.

2. In its comments opposing the channel substitutions at Lufkin and Tyler, Texas, IBN states that if either KLTV or KTRE² channel changes were granted, IBN's low power stations in Longview and Lufkin would be displaced. IBN argues that the displacement of IBN's stations would be a huge loss to the viewers in the communities the stations serve and to date it has been unable to find any suitable replacement channels. IBN states that opposition to the proposed channel substitutions has spread to other cities within the viewing areas of KLTV and KTRE and alleges that 6,241 persons have signed petitions opposing Civic's proposal. IBN submits that many petitions are still in circulation and the final tally of original signatures is expected to exceed 10,000. IBN argues that it is the Commission's duty to act in the public interest, and, in this instance, there is no better indicator of the public interest than the petitions signed by thousands of citizens. IBN asserts that the arguments advanced on behalf of Civic "do not appear to have any known relationship to reality, but merely appear to be boilerplate written in a lawyer's office to achieve the desired result". IBN also alleges that Civic has made misrepresentations to the Commission regarding its ownership and operation of KLTV and KTRE. Specifically, IBN states that a knowledgeable industry source has stated that Civic License Holding Company, Inc., no longer exists. Further, it claims that KLTV and KTRE are actually owned and operated by The Liberty Corporation and not by Civic. IBN urges the Commission to investigate and deny Civic's proposal to change channels at Lufkin and Tyler.

3. Miller, an owner of Media Services Group, an advertising agency, in opposing the channel proposals states that IBN affords an invaluable service to Lufkin and Tyler. Miller points out that IBN provides coverage of area high school and college sports, academic events, community events, weekly services of many churches and weather alerts. Sharp, the Superintendent of the Lufkin Independent School District, states that IBN is an important supporter of the local school system, noting that IBN provides valuable training and job opportunities for numerous students. Calvert, general manager of the Lufkin Educational Broadcasting Foundation, and Rambin, a private citizen, also state that IBN provides cultural balance and broadcast training for local teens. McKinney, a CPA, filed an affidavit in both proceedings, attesting that he examined more than 6,241 signatures on petitions opposing the channel substitution proposals advanced by Civic and expects the final signature count to be well over 10,000.

4. In support of its proposal, Civic states that the Commission is requiring existing full power television stations to convert from analog to digital broadcasting at their own expense. In response to this mandate, Civic notes that it submitted proposals that identify alternate DTV channels that would reduce KTRE's and KLTV's tower loading problems and permit the stations to transmit digitally from existing towers.² Civic claims that the proposed channel changes at Tyler and Lufkin will facilitate its efforts to commence digital operations in these communities. Civic also asserts that operation on DTV channel 11 and DTV channel 10 at Lufkin and Tyler

² Civic submits that the Commission has identified the construction of new towers and the upgrade of existing ones as some of the "most significant issues in converting to digital broadcasting, citing *"Commission Creates DTV Tower Strike Force to Target Potential Problems in Implementing Digital Television,"* FCC News Report No. MM 98-6 (May 29, 1998).

will provide improved signal coverage for viewers in both communities. Civic states that although the proposed operation of KTRE-DT on channel 11 and KLTU-DT on channel 10 is predicted to displace low power stations KIBN-LP and KLGU-LP, it argues that the displacement of secondary LPTV stations due to DTV channel changes is authorized under the Commission's rules. Civic contends that the Commission determined that in order to have enough spectrum to assign a second channel to all full power television stations, it would need to displace many LPTV and translator stations.³ Civic notes that the Commission stated in April 1999, that about "35 to 45 percent of the LPTV stations will have to either change their operation or cease operation to protect DTV service,"⁴ a percentage, according to Civic, that translates into nearly 2,000 LPTV stations. However, Civic points out that unlike a number of LPTV stations that have terminated service altogether, KIBN-LP and KLGU-LP can continue their broadcast operations on alternate channels. To this end, Civic states, at its own expense, that it has identified suitable replacement channels for KIBN-LP and KLGU-LP and has attempted to work with IBN to facilitate KIBN-LP and KLGU-LP's relocation. Civic, however, notes that IBN has been unwilling to entertain these proposed channel changes and has commenced a grassroots public relations campaign to thwart Civic channel substitution proposals. Nevertheless, Civic urges the Commission to grant its proposal since it will enable Civic to expedite the commencement of KTRE-DT and KLTU-DT's service to the public and improve signal coverage.

5. IBN filed reply comments stating that Civic's claim that its proposals would serve the public interest are unsubstantiated and unsupportable boilerplate. IBN argues that Civic understates its present coverage and fails to acknowledge IBN's plan to upgrade its existing facilities on channel 10 and channel 11. With respect to Civic's statement that alternate channels are available for KIBN-LP and KLGU-LP use, IBN states there are substantial problems with changing channels, one being IBN's lease does not permit the type of changes that Civic suggests. IBN asserts that its tower is heavily loaded and doubts that a new antenna is feasible.

6. In rebuttal, Civic states that IBN and other parties filing opposing comments have not raised any relevant issues in this proceeding. Civic argues that the IBN petitions do not provide any reliable gauge of public sentiment given that there is no indication that IBN ever informed signatories that KIBN-LP and KLGU-LP can relocate to another channel.⁵ Civic asserts that the commenters acted under the erroneous belief that the proposed channel changes would force

³ Citing Advanced Television Systems and Their Impact Upon the Existing Television Broadcasting Service, *Sixth Report and Order*, 12 FCC Rcd 14588 (1997) ("*Sixth Report and Order*").

⁴ Citing the Commission web site <http://www.fcc.gov/oet/faqs/dtv-tvtx.html>, *TV Translators and DTV Transition*.

⁵ Alternatively, Civic suggests that IBN could possibly conduct a channel swap with its other low power stations. They include: KCTL-LP (Livingston, Texas); KHTM-LP (Lufkin, Texas); KHTX-LP (Huntsville, Texas); KHXL-LP (Huntsville, Texas); KLGU-LP (Longview, Texas); KHUF-LP (Lufkin, Texas); KNCD-LP (Nacogdoches, Texas); KTWC-LP (Crockett, Texas); and KWTC-LP (Kerrville, Texas).

KIBN-LP and KLGW-LP to terminate service. Civic states that it has attempted to facilitate the relocation of both stations to alternate channels, but from the beginning, IBN has refused to consider relocation despite its having accepted *a* secondary license. Civic contends that adoption of its proposals will resolve certain technical issues, achieve operating efficiencies, and expedite digital television service to the communities of Lufkin and Tyler. Civic states that substituting channel 10 and channel 11 will permit Civic's stations to operate with a single, dual-channel antenna and transmission line, which will enable Civic to use its existing towers. Further, Civic points out that the use of Channel 11 by KTRE-DT will result in a substantial increase in the station's service population. Civil again notes that while the adoption of its proposals will displace KIBN-LP and KLGW-LP, both stations can preserve their operations by relocating to channel 14 and channel 36, respectively. Civic maintains that it continues its offer to help facilitate IBN's relocation to the alternate channels. Finally, Civic states that IBN's speculative allegations about KTRE (TV) and KLTN (TV)'s ownership structure are irrelevant noting that a routine inspection of the public-available FCC ownership reports would have answered IBN's questions.⁶

Discussion

7. Based on the record before us, we believe the public interest is served by adopting Civic's channel substitution proposals since it will permit stations KLTN-DT and KTRE-DT to reduce potential tower structure loading problems and reduce build-out costs. Moreover, we find that the opposing parties, specifically IBN, have not raised any persuasive reasons for denying Civic's requests.⁷ In essence, IBN raises the same issues that were addressed in the Commission's *Report and Order* in the *Establishment of a Class A Television Service*.⁸ There, the Commission reaffirmed that the low power television service was a "secondary spectrum priority" service and must not cause interference to existing or new full-service stations. Furthermore, in implementing digital television, the Commission stated that "low power stations must give way to new operations by primary users of the spectrum, including... new full service DTV stations operated by existing broadcasters under our DTV implementation plan".⁹ IBN's low power stations, KIBN and KLGW, are simply not entitled to protection.

⁶ Civil also asserts that it is well established that the Commission will not consider (even well supported) allegations of misconduct in the context of an allotment proceeding, citing; *Monterey, Tennessee and Monticello, Kentucky*, 1 FCC Rcd 1606 (1992); and *Chateaugay, New York*, 9 FCC Rcd 3957 (1994).

⁷ The "petition" that McKinney and IBN referred to, is a petition that simply indicates that the signers oppose Civic's proposals because they would not be in the public interest. The signers did not provide any reason to support their conclusion. In addition, IBN also raises unsubstantiated claims regarding Civic's ownership structure. This type of issue does not fall within the scope of the rule making process and will not be addressed.

⁸ See 15 FCC Rcd 6355 (2000). See also, *Sixth Report and Order*; Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 1418 (1998) ("*MO&O Sixth Report and Order*").

⁹ See *MO&O Sixth Report and Order*.

Additionally, we note that Civic has attempted to ease the impact of its proposed channel substitutions on the operation of low power stations KIBN and KLGW. Civic has identified replacement channels and has apparently offered other assistance to IBN to relocate to those channels. This is the kind of cooperative spirit we hope that all full service licensees would display in similar circumstances. Moreover, the adoption of Civic's channel substitution proposals serves the Commission's goal of allowing broadcasters some flexibility so that they may expeditiously continue to build out and implement DTV service.

8. DTV channel 10 can be allotted to Tyler, Texas, and DTV channel 11 can be allotted to Lufkin, Texas as proposed, in compliance with the principle community coverage requirement of Section 73.625.(a).¹⁰ In addition, we find that these channels are acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Stations KLTW-DT and KTRE-DT with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
TX Tyler	10	7	302	213
TX Lufkin	11	9.25	204	622

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 25, 2002, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

	<u>Channel No.</u>
Tyler, Texas	10
Lufkin, Texas	11

10. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Civic License Holding Company, Inc. shall submit to the Commission minor change applications for construction permits (FCC Form 301) specifying DTV Channel 10 in lieu of DTV Channel 38 for station KLTW-DT and Channel 11 in lieu of DTV channel 43 for station KTRE-DT.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

¹⁰ The coordinates for channel 10 at Tyler, Texas, are North Latitude 32-32-23 and West Longitude 95-13-12. The coordinates for channel 11 at Lufkin, Texas, are North Latitude 31-25-09 and West Longitude 94-48-03.

12. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202)418-1600.

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau